

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

FILED

03 JUL 21 PM 4: 02

U.S. DISTRICT COURT
N.D. OF ALABAMA

TIMOTHY TONEY,

Plaintiff,

vs.

CIVIL ACTION NO. 03-PT-0831-NE

MADISON COUNTY CIRCUIT
COURT JUDGES JAMES P. SMITH
and EDWARD D. FAY,

Defendants.

ENTERED

JUL 21 2003

MEMORANDUM OPINION

The magistrate judge filed a report and recommendation on June 12, 2003, recommending that this action filed pursuant to 42 U.S.C. § 1983 be dismissed under 28 U.S.C. § 1915A(b). No objections have been filed.

Having carefully reviewed and considered de novo all the materials in the court file, including the report and recommendation, the court is of the opinion that the magistrate judge's report and recommendation is due to be and is hereby ADOPTED and his recommendation is ACCEPTED.¹ Accordingly, the complaint is due to be DISMISSED pursuant to 28 U.S.C. § 1915A(b). An appropriate order will be entered.

DONE this 18th day of July 2003.

ROBERT B. PROPST

SENIOR UNITED STATES DISTRICT JUDGE

¹ The court notes that the plaintiff filed his complaint as a petition for a writ of mandamus. It was treated as both a petition for a writ of mandamus and a § 1983 complaint in the magistrate judge's report and recommendation. To the extent that the complaint could be construed as a petition for writ of habeas corpus, it is due to be dismissed because Toney did not name the appropriate parties as defendants. However, the plaintiff retains the right to challenge his conviction and sentence by filing a 28 U.S.C. § 2254 habeas corpus action.